

1 THE HONORABLE MARSHA J. PECHMAN
2
3
4
5
6
7
8

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 THE POKÉMON COMPANY
10 INTERNATIONAL, INC., a Delaware
11 corporation,

12 Plaintiff,

13 v.

14 JOHN/JANE DOES 1–3,

15 Defendants.

No. 2:19-cv-1911

PLAINTIFF THE POKÉMON COMPANY
INTERNATIONAL, INC.’S *EX PARTE*
MOTION FOR ADDITIONAL
DISCOVERY

NOTE ON MOTION CALENDAR:
January 21, 2020

16 Plaintiff The Pokémon Company International, Inc. (“TPCi”), moves this Court for an
17 order under Federal Rule of Civil Procedure 26(a)(1) authorizing TPCi to take additional
18 discovery before a Rule 26(f) conference for the limited purpose of learning the identity of
19 Defendants Doe 1, known by Discord username “WolfenX,” and Doe 3, known by Discord
20 username “Uxinator.” On December 10, 2019, this Court granted TPCi’s first *ex parte* motion
21 for expedited discovery to serve subpoenas on Discord, a Discord user, and 4chan. Dkt. No. 5.
22 Shortly thereafter, TPCi served third-party subpoenas on the individual and entities, and each has
23 now responded. Despite these responses, TPCi has been unable to definitively identify WolfenX
24 and Uxinator who were responsible for leaking images from TPCi’s *Pokémon Sword and Shield:*
25 *The Official Galar Region Strategy Guide* (“Strategy Guide”). From the Discord subpoena
26

MOTION FOR ADDITIONAL DISCOVERY
(No. 2:19-cv-1911) – 1

146905697.3

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

1 response, TPCi learned of IP addresses and email addresses that are associated with WolfenX
 2 and Uxinator.

3 TPCi now moves this Court for an order allowing it to send subpoenas to third-parties
 4 Charter Communications Inc., Verizon Wireless, and Google that are reasonably likely to lead to
 5 the identity of the individuals who leaked the images of the Strategy Guide. TPCi also requests
 6 that this Court permit it to serve additional third-party subpoenas, if necessary, to identify
 7 WolfenX and Uxinator based on the responses from these three subpoenas. Good cause exists to
 8 allow the proposed discovery.

9 I. BACKGROUND

10 TPCi is an internationally renowned media franchise centered on fictional Pokémons
 11 characters featured in a variety of media and merchandise. Compl. (Dkt. No. 1) ¶ 11. TPCi
 12 worked with GAME FREAK and Nintendo on the release of the newest Pokémons video games,
 13 Pokémons Sword and Pokémons Shield, on November 15, 2019. *Id.* ¶¶ 14–15. TPCi developed
 14 the Strategy Guide for Pokémons Sword and Pokémons Shield that contained images and
 15 descriptions of never-before-seen Pokémons from these games and their evolutions, to be released
 16 on November 22, 2019. *Id.* ¶ 21–22.

17 But on November 1 and 2, 2019, Defendants leaked more than a dozen images from the
 18 Strategy Guide without TPCi’s authorization. *Id.* ¶ 30. It appears from the leaked images that
 19 pictures of the Strategy Guide were taken on a cell phone and then posted to Discord. *Id.* ¶¶ 31–
 20 32 & Exs. 1–38. Through these posts, Defendants disclosed images of multiple new Pokémons
 21 and their attributes, as well as new evolutions for existing Pokémons. *Id.*

22 TPCi took immediate action to take down the websites where the leaked images could be
 23 found, investigate the source of the leak, and file this lawsuit. Dkt. No. 1. TPCi then moved, *ex*
 24 *parte*, to serve third-party subpoenas on Discord, 4chan, and DimensioNz#3307. Dkt. No. 3.
 25 The Court granted TPCi’s motion on December 10, 2019, and TPCi sent the subpoenas for
 26 service the next day. Dkt. No. 5; Declaration of Holly M. Simpkins (“Simpkins Decl.”) ¶ 2.

1 TPCi has received responses to each subpoena; however, TPCi does not have sufficient
 2 information to definitively identify key players WolfenX and Uxinator. *Id.* ¶ 2. TPCi obtained
 3 multiple IP addresses and email addresses from the Discord subpoena response that are
 4 connected to WolfenX and Uxinator. TPCi obtained nine IP addresses through which the
 5 WolfenX account logged into Discord. *Id.* ¶ 4. Seven of these IP addresses ping to the Tampa,
 6 Florida area. *Id.* These seven IP addresses are associated with Charter Communications Inc. and
 7 Verizon Wireless. *Id.* TPCi also obtained eighteen IP addresses through which Uxinator logged
 8 into Discord. *Id.* ¶ 5. The IP records show that Uxinator logged into Discord hundreds of times
 9 since June 2019. *Id.* The majority of these logins occurred using two IP address that ping to
 10 Lutz, Florida that are associated with Charter Communications Inc. *Id.* TPCi also learned of
 11 Gmail addresses connected with the WolfenX and Uxinator Discord accounts. *Id.* ¶ 6.

12 **II. ARGUMENT**

13 A court may authorize discovery to be taken before the parties' Rule 26(f) conference for
 14 "good cause." Fed. R. Civ. P. 26(d)(1); *Nat'l Prods., Inc. v. Does 1–4*, Case No. C16-0702JLR,
 15 2016 WL 2989971, at *2 (W.D. Wash. May 23, 2016) ("Courts within the Ninth Circuit
 16 generally consider whether a plaintiff has shown 'good cause' for such early discovery."). Good
 17 cause generally exists where the need for expedited discovery outweighs the prejudice to the
 18 party from whom discovery is sought. *Semitool, Inc. v. Tokyo Electron Am., Inc.*, 208 F.R.D.
 19 273, 276 (N.D. Cal. 2002). "[W]here the identity of alleged defendants [is not] known prior to
 20 the filing of a complaint[,] the plaintiff should be given an opportunity through discovery to
 21 identify the unknown defendants, unless it is clear that discovery would not uncover the
 22 identities, or that the complaint would be dismissed on other grounds." *Wakefield v. Thompson*,
 23 177 F.3d 1160, 1163 (9th Cir. 1999) (quotation omitted). Courts "routinely permit early
 24 discovery for the limited purpose of identifying 'Doe' defendants on whom process could not
 25 otherwise be served." *ZG TOP Techs. Co. Ltd. v. Doe*, Case No. C19-92-RAJ, 2019 WL
 26 917418, at *2 (W.D. Wash. Feb. 25, 2019); *see also Bodyguard Prods., Inc. v. Doe 1*, Case No.

1 C17-1647-RSM, 2018 WL 1470873, at *2 (W.D. Wash. Mar. 26, 2018). Courts also permit
 2 additional expedited discovery where the initial discovery revealed new IP addresses associated
 3 with the Doe Defendants. *See Order Granting Plaintiff's Ex Parte Application for Additional*
 4 *Expedited Discovery, Sapient Corp. v. Does 1-50*, Case No. 18-cv-01681-WHO, Dkt. No. 23
 5 (N.D. Cal. Apr. 12, 2018).

6 To determine whether "good cause" exists, courts consider whether plaintiff:

7 (1) identifies the John Doe defendant with sufficient specificity that the Court can
 8 determine that the defendant is a real person who can be sued in federal court, (2)
 9 recounts the steps taken to locate and identify the defendant, (3) demonstrates that
 10 the action can withstand a motion to dismiss, and (4) proves that the discovery is
 11 likely to lead to identifying information that will permit service of process.

12 *Nat'l Prods.*, 2016 WL 2989971, at *2. Courts have also granted requests, like TPCi's, to serve
 13 additional follow-up subpoenas based on information learned from the authorized subpoenas
 14 without filing an additional motion to the Court. *See POW Nevada, LLC v. Doe 1*, Case No.
 15 C17-1649 RSM, 2018 WL 1470869, at *2 (W.D. Wash. Mar. 26, 2018) (permitting plaintiff to
 16 serve additional subpoenas if the ISP served by the authorized subpoena "identifies downstream
 17 ISPs"); *Bodyguard Prods.*, 2018 WL 1470873, at *2. Additional discovery should be allowed
 18 because TPCi satisfies each of these criteria and the need for discovery outweighs any prejudice
 19 to the responding parties.

20 **A. WolfenX and Uxinator Are Real People**

21 The first element requires plaintiff to show that the Doe is a "real person[] who can be
 22 sued in federal court." *Nat'l Prods.*, 2016 WL 2989971, at *2. In *National Products*, this
 23 element was met when plaintiff "provided evidence to support its claims that John Does 1-4 are
 24 sellers on Amazon.com using fictitious names to sell products that infringe upon NPI's
 25 trademark." *Id.* By granting TPCi's first *ex parte* motion, this Court determined that defendants,
 26 including WolfenX and Uxinator, are real people. Dkt. No. 5. The first element is met.
 WolfenX's and Uxinator's respective conversations in the Discord channel confirm that the two

1 are real people. Compl. Exs. 1–38; Simpkins Decl., Ex. A. These conversations are not the
 2 work of bots. WolfenX and Uxinator are real people subject to suit in federal court.¹

3 **B. TPCi Took Reasonable Steps To Ascertain Defendants' Identities**

4 The second factor requires a party to identify the steps taken to locate the defendant.
 5 *Columbia Ins. Co. v. seescandy.com*, 185 F.R.D. 573, 579 (N.D. Cal. 1999). “This element is
 6 aimed at ensuring that plaintiffs make a good faith effort to comply with the requirements of
 7 service of process and specifically identifying defendants.” *Id.*

8 This element is satisfied because TPCi has continued its good faith efforts to identify
 9 WolfenX and Uxinator but has been unable to do so. As TPCi explained in its first *ex parte*
 10 motion, TPCi investigated Discord, 4chan, and other social media platforms to identify
 11 Defendants. Dkt. No. 3 at 4–5. TPCi continued its investigation after receiving the subpoena
 12 responses. TPCi attempted to examine the metadata associated with the images sent by WolfenX
 13 (which may have contained geolocation tags) but found that the metadata had been stripped from
 14 the images. Simpkins Decl. ¶ 3. TPCi also learned of nine IP addresses connected to the
 15 WolfenX Discord account, and through additional investigation it learned that seven of these IP
 16 addresses (and those that accounted for the vast majority of WolfenX’s logins to Discord) ping to
 17 the Tampa, Florida area. *Id.* ¶ 4. TPCi obtained eighteen IP addresses connected to the Uxinator
 18 Discord account, and through the same process learned that two of these IP addresses accounted
 19 for the majority of logins on the Uxinator account and that these IP addresses ping to Lutz,
 20 Florida. *Id.* ¶ 5. TPCi also learned of Gmail addresses associated with each account. *Id.* ¶ 6.
 21 Nevertheless, TPCi has not been able to definitively identify the individuals behind the accounts.
 22 TPCi has made a good faith effort to exhaust its non-judicial means to identify WolfenX and
 23 Uxinator and now seeks additional, targeted subpoenas to learn their identities.

24

25 ¹ Defendants are subject to personal jurisdiction in this court because they expressly
 26 aimed their actions at TPCi, a Washington business, knowing the effects of their tort would be
 felt here. *Microsoft Corp. v. Mountain W. Computers, Inc.*, Case No. C14-1772-RSM, 2015 WL
 4479490, at *7 (W.D. Wash. July 22, 2015).

1 **C. TPCi's Trade Secret Claims Are Likely To Survive a Motion to Dismiss**

2 The third factor considers whether a plaintiff's claim would survive a motion to dismiss.
 3 *See Strike 3 Holdings LLC v. Doe*, Case No. 18-cv-06938-WHO, 2019 WL 402358, at *2 (N.D.
 4 Cal. Jan. 31, 2019). TPCi's complaint alleges breach of the Defend Trade Secrets Act and the
 5 Washington Uniform Trade Secrets Act. Dkt. No. 1. Through its grant of TPCi's first motion,
 6 this Court determined that TPCi's complaint could withstand a motion to dismiss on both counts.
 7 Dkt. No. 5.

8 **D. Discovery Is Likely To Lead To WolfenX and Uxinator's Identities**

9 The final factor concerns whether there is a reasonable likelihood the proposed discovery
 10 will uncover the identities of the Doe defendant. *Columbia*, 185 F.R.D. at 579. Subpoenas to
 11 Charter Communications Inc., Verizon Wireless, and Google requesting IP session times and
 12 subscriber information, including name, physical address, email address, and/or telephone
 13 number, should yield information sufficient to identify WolfenX and Uxinator. *See Twitch*
 14 *Interactive, Inc. v. Does 1 Through 100*, Case No. 19-cv-03418-WHO, 2019 WL 3718582, at *5
 15 (N.D. Cal. Aug. 7, 2019) (granting motion for expedited discovery that included serving
 16 subpoenas to Google and Internet Service Providers such as Comcast and Charter); Simpkins
 17 Decl., Exs. A–C (proposed subpoenas).

18 **E. There Is No Prejudice from the Proposed Discovery**

19 The proposed discovery will not prejudice the responding parties. *See Semitool*, 208
 20 F.R.D. at 276 (“Good cause may be found where the need for expedited discovery, in
 21 consideration of the administration of justice, outweighs the prejudice to the responding party.”).
 22 Charter Communications Inc., Verizon Wireless, and Google are established companies that
 23 routinely deal with discovery requests, and the proposed subpoenas seek only limited
 24 information. Simpkins Decl., Exs. A–C. These companies would suffer little burden from
 25 producing data regarding account information. And, TPCi will be unable to locate and serve

1 Defendants without the requested discovery. Accordingly, TPCi's need for discovery to identify
2 Defendants outweighs any prejudice to the responding parties.

3 **III. CONCLUSION**

4 For the foregoing reasons, TPCi respectfully requests that the Court grant its motion for
5 additional, limited discovery and permit it to serve third-party subpoenas on Charter
6 Communications Inc., Verizon Wireless, and Google, as well as to serve follow-up subpoenas
7 based on the information received from the subpoenas to Charter, Verizon and Google.

8
9 DATED this 21st day of January, 2020.

10
11 *s/Holly M. Simpkins*
12 Holly M. Simpkins, WSBA No. 33297
13 Lauren W. Staniar, WSBA No. 48741
14 Jacob P. Dini, WSBA No. 54115
15 **Perkins Coie LLP**
16 1201 Third Avenue, Suite 4900
17 Seattle, WA 98101-3099
18 Telephone: 206.359.8000
19 Facsimile: 206.359.9000
20 E-mail: hsimpkins@perkinscoie.com
21 E-mail: lstaniar@perkinscoie.com
22 E-mail: jdini@perkinscoie.com

23
24 Attorneys for Plaintiff
25 The Pokémon Company International, Inc.
26